

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

906 WRIT PETITION NO. 7039 OF 2014

**NIVRUTTI LAXMAN KASBE
VERSUS
INDIRABAI RANBA THORE AND OTHERS**

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Advocate for Petitioner : Mr.Shrikant B.Madde
Advocate for Respondent Nos.1 to 5 : Mr.R.K.Ingole
Advocate for Respondent Nos.6 to 9 :
Mr.P.P.Mandlik h/f. Mr.A.S.Gandhi

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CORAM : R.M.BORDE, J.

DATE: 27th March, 2018

PER COURT:-

1) The petitioner is objecting to the order passed by the District Judge, Udgir in Miscellaneous Civil Appeal No.32 of 2012 decided on 14.7.2014.

2) The first appellate Court has rightly allowed the Miscellaneous Civil Appeal for the reason that the subsequent application tendered by the petitioner claiming the same relief in the same proceedings inspite of rejection of the earlier

application, cannot be maintained.

3) It is not matter of dispute that the petitioner tendered an application at Exh.33 in Regular Civil Suit No.22 of 2010, seeking a direction against defendant Nos.8 to 11, prohibiting them from alienating the suit property and the said application has been turned down by the Trial Court, in view of the order passed on 28.2.2011. The factum of rejection of earlier application at Exh.33 was not disclosed by the petitioner – original plaintiff in the application for the same relief tendered at Exh.50. In spite of bringing this fact to the notice of the Trial Court, the application came to be allowed.

4) The first appellate Court dealing with Miscellaneous Civil Application No.32 of 2012, has corrected the error. Infact, it was impermissible for the Trial Court to consider subsequent application tendered by the petitioner at Exh.50

and grant relief, which was denied at an earlier point of time while dealing with application at Exh.33 presented by the petitioner – original plaintiff.

5) Principle of *res judicata* is applicable to the interlocutory proceeding during the continuance of suit, which aspect has been overlooked by the Trial Court.

6) In view of above, petition is devoid of merits. Hence stands rejected.

(R.M.BORDE)
JUDGE